Supreme Court, U.S.
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No. 96-2

In The

Supreme Court of the United States

October Term, 1995

McDERMOTT, INC.,

Petitioner,

versus

CAPITAL WELDING AND FABRICATION, INC. and LANDRY ENTERPRISES, INC. of Morgan City,

Respondents.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF IN OPPOSITION OF RESPONDENTS CAPITAL WELDING AND FABRICATION, INC. AND LANDRY ENTERPRISES, INC.

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26 pp

QUESTION PRESENTED FOR REVIEW

I.

Whether the courts below erred in holding that § 905(c) of the Longshore Harbor Workers' Compensation Act, 33 U.S.C. § 901 *et seq.*, did not apply to the contract between McDermott and Capital.

LIST OF PARTIES

The following was omitted from petitioner's list of parties:

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STATEMENT OF THE CASE

I. STATEMENT OF FACTS

This is a dispute for contractual indemnity. McDermott, Inc. ("McDermott") contracted with Capital Welding and Fabrication, Inc. ("Capital") for the provision of welders to work on a fixed platform on the Outer Continental Shelf off the coast of Louisiana. Capital obtained the welders from Landry Enterprises, Inc. ("Landry"). The substance of the agreement between McDermott and Capital was contained in a McDermott form document entitled "Blanket Subcontractor's Agreement." Aside from the provision of laborers, no other obligation was incumbent upon Capital in the performance of the contract. Specifically, Capital was not required to provide a vessel for the performance of its contractual obligation, nor was the use of any vessel referenced in the agreement.

Wagner, an employee of Landry and at the platform pursuant to this agreement, claimed he sustained personal injury when he slipped in the washroom of a derrick barge, the DB 51. The derrick barge, owned by McDermott, was brought to the platform by that company for the purpose of housing the workers on the platform construction project. The fact that Wagner performed all of his work on the platform, however, is undisputed. The derrick barge was not mentioned in the contract, nor was it necessary for the performance of the welding work on the platform.

II. PROCEEDINGS BELOW

Wagner filed suit under the Jones Act, 46 U.S.C. § 688, against McDermott, Landry, and Capital, and included a claim against McDermott for unseaworthiness of the derrick barge. Wagner also brought an alternative claim under 33 U.S.C. § 905(b) of the Longshore and Harbor Workers' Compensation Act alleging vessel negligence. McDermott filed claims against Capital and Landry and their insurers for contractual indemnity under the Blanket Subcontractor's Agreement. The principal claims were settled and subsequently dismissed. McDermott's claims were the subject of cross-motions for summary judgment, which the district court denied. McDermott's claim for entitlement to contractual indemnity was tried on the merits on the briefs and evidence submitted. The district court found that the agreement was a non-maritime contract, and that state law applied as surrogate federal law under the Outer Continental shelf Lands Act, 43 U.S.C. § 1331, *et seq.* The district court further found that 33 U.S.C. § 905(c) of the LHWCA did not apply, as the agreement was not "vessel-related." As that provision was inapplicable, there was no question of inconsistency between § 905(c) and Louisiana law.

The U.S. Fifth Circuit affirmed the district court's judgment, calling the opinion "cogent and well-reasoned."[1] Noting that McDermott had hired Capital to do welding work on the fixed platform, the appellate

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[1] Petitioner's Appendix, p.1 hereafter "P.App. ___".

court concurred in the finding that the contract was non-maritime, and that § 905(c) did not apply because the indemnity provision was a non-vessel related indemnity agreement. The court declined to rule on the inconsistency issue because it was unnecessary.

Unlucky on two counts, McDermott, hoping the third time will prove to be the proverbial charm, petitions this Court for review on a writ of certiorari.

SUMMARY OF ARGUMENTS FOR DENYING THE WRIT

In its petition, McDermott, Inc. seeks to enforce a contractual indemnity agreement prohibited under controlling law, that of the state of Louisiana. McDermott now exaggerates the effect of the decisions below and paints their consequences with a broad brush gripped in a heavy hand. The judgment of the U.S. Fifth Circuit Court of Appeals in favor of Capital is not appropriate for review on a writ of certiorari. This Court is not now required to accept McDermott's invitation to expound upon § 905(c) of the Longshore and Harbor Workers' Compensation Act because that provision does not touch upon this case. The petition should be denied.

McDermott has presented no issue appropriate for this Court's review. There is no inconsistency between the decisions of the lower courts in this case and another U.S. Court of Appeals, nor a state court of last resort. There is no important question of federal law to be decided by this Court, nor are the lower courts' opinions in conflict with a relevant decision of this Court. McDermott in essence asks

this Court to reverse a finding of fact, i.e., that its contract with Capital is one between an employer and a vessel. This is not the "stuff" of which writs are made.

ARGUMENT

I. MCDERMOTT SEEKS REVIEW OF A FACTUAL ISSUE

The district court and the appellate court below both found that when McDermott contracted with Capital/Landry, it did so NOT as the owner of a vessel, but rather as a contractor.[2] Section 905(c) of the LHWCA, which would permit enforcement of the contractual indemnity provision, only applies to contracts between "the employer of a person. . . . and the vessel." Therefore, as the contract at issue was between an employer and a non-vessel contractor, § 905(c) of the LHWCA simply is not implicated in the contractual indemnity dispute.

McDermott is urging this Court to rule that Louisiana's Oilfield Indemnity Act, La. R.S. 9:2780, is inconsistent with § 905(c), and that as a matter of law, state law must be preempted by federal statute. Perhaps, in the future, this Court may have occasion to consider such a question. However, this case does not provide such an opportunity for the simple reason that § 905(c) does not apply to this indemnity agreement. The problems of inconsistency and federal preemption do not arise in this

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[2] P.App. pp. 7, 26; Minute Entry of the district court filed January 23, 1995, attached as Respondent's Appendix, p. 1 hereafter "R.App. ___".

case because, as this Court has previously observed, "for federal law to oust adopted state law federal law must first apply." *Rodrigue v. Aetna Casualty and Surety Company.*[3] Section 905(c) does not apply; hence, the issues urged by McDermott do not arise.

McDermott is asking this Court to review and ultimately reverse the factual finding that McDermott acted as a contractor, not as a vessel owner. That finding is amply supported by the record, and in the absence of compelling reasons to the contrary, is insufficient grounds to grant a writ of certiorari.[4] For this reason alone, the petition should be denied.

II. CORRECTNESS OF DECISION BOLSTERED BY *HODGEN V. FOREST OIL CORP.*

McDermott refers emphatically to the "extreme confusion" prevailing in the U.S. Fifth Circuit regarding the difference between maritime and non-maritime contracts. While McDermott's characterization is somewhat dramatic, to the extent any confusion did exist, it has been addressed and resolved by a recent decision less than two months old. Three months after the *Wagner* decision, the Fifth Circuit handed down its decision in *Hodgen v. Forest Oil Corp.*[5] McDermott does not address this case in its petition. Arguably, the *Hodgen* opinion renders McDermott's petition moot, since it endorses the result reached

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[3] 395 U.S. 352, 359, 89 S.Ct. 1835, 1839, 23 L.Ed.2d 360 (1969).

[4] Rules of the U.S. Supreme Court, Rule 10.

[5] 87 F.3d 1512 (5th Cir. 1996).

in *Wagner* and clearly establishes the three-part OCSLA test as the law of this circuit. Indeed, that opinion refers to the lower court decisions in this case with great esteem. Whatever merit McDermott's position may have had before *Hodgen,* that decision undermines McDermott's basic contention that maritime law controlled the enforcement of the contractual indemnity decision.

At issue in *Hodgen* was a contractual indemnity provision in a blanket agreement between a service contractor and the owner of a fixed platform on the Outer Continental Shelf. The court addressed the issue of the nature of the contract, and more importantly, by what method that issue was to be resolved. Some confusion had arisen as to whether state law applied of its own force, because the contract was non-maritime, or whether state law could only apply as a result of the three-part OCSLA test, of which analysis of the nature of the contract was an element. The *Hodgen* court held that Louisiana law would apply to vitiate the indemnity agreement if the three-step OCSLA test so dictated. The court's decision made clear that state law did not apply of its own force to the contractual dispute, but that it applied solely as a function of the legislative will as expressed through OCSLA.

The OCSLA test, first articulated in *Union Texas Petroleum v. PLT Engineering,*[6] requires the following: 1) an OCSLA situs; 2) that federal law not apply of its own force; and, 3) that state law must not be inconsistent with

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[6] 895 F.2d 1043 (5th Cir.), *cert. denied,* 498 U.S. 848, 111 S.Ct. 136, 112 L.Ed.2d 779 (1992).

federal law. As a matter of law, the *Hodgen* court found that federal law does not apply of its own force when, as in the present case, the contract at issue is non-maritime.

The validity of the *Wagner* opinion was enforced by *Hodgen*. Referring to the inconsistency between the cases that applied the three-part OCSLA test and the six-part maritime contract test,[7] that court observed that the "difficulty our case law has created, and the proper way to safety, are both evident in the recent opinion in *Wagner v. McDermott, Inc.*"[8] More importantly for our purposes, the court found that the Louisiana Oilfield Indemnity Act was not inconsistent with federal law as demonstrated by its reference to the *Knapp* decision, in which the U.S. Fifth Circuit declined to extend § 905(c) to non-vessel related indemnity agreements.[9] If the contract is not with a vessel, § 905(c) simply is not implicated, thus no inconsistency arises.[10]

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[7] *Davis & Sons v. Gulf Oil Corp.*, 919 F.2d 313, *reh. den.* 924 F.2d 1054 (5th Cir. 1990).

[8] 87 F.3d at 1524.

[9] 87 F.3d at 1528.

[10] McDermott argues earnestly that this Court must head off the looming conflict between general maritime law and Louisiana law lest maritime commerce be disrupted. Certainly, that conflict does not now arise, and, possibly, it never will. Theoretically, it is difficult to see how any such inconsistency would occur, as a contract "with a vessel" in the true sense would ostensibly be, in all likelihood, a maritime contract. If the contract is maritime, then in all probability, general maritime law would govern its enforcement, and Louisiana law would not be implicated.

Any argument that McDermott may have had is decimated by the subsequent *Hodgen* opinion, which cites the *Wagner* decisions below with enthusiasm. The rationale of *Hodgen* also indicates that McDermott's arguments as to admiralty jurisdiction and the principal § 905(b) claim miss the point. The issue and its proper resolution are much more narrow and straightforward than McDermott's petition conveys. If state law applies as a result of the OCSLA test, the contract is governed by Louisiana law. The jurisdiction of the federal court and the nature of the principal demand are not factors in determining the law governing the contract.

III. MCDERMOTT PROVIDES NO COMPELLING REASON TO GRANT THE WRIT

The principal purpose served by certiorari jurisdiction is to allow the United States Supreme Court to resolve conflicts among Circuit Courts of Appeal and state courts regarding the meaning of provisions of federal law. *Braxton v. U.S.*[11] The U.S. Fifth Circuit's affirmation of the district court decision in this case does not conflict with another federal appellate court decision, nor is there any relevant decision from a state court of last resort. In fact, none of the reasons cited by Rule 10 of the Rules of the Supreme Court of the United States are applicable here. Admittedly, that list is non-inclusive, yet McDermott still fails to provide a compelling reason for review.

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[11] 500 U.S. 344, 111 S.Ct. 1854, 114 L.Ed.2d 385 (1991).

McDermott's continued insistence on its role as a "vessel" for purposes of the Capital contract taints every other aspect of its argument. The meaning of § 905(c) of the LHWCA is not at issue in this case, and this Court need not decide if, in fact, § 905(c) is inconsistent with the Louisiana Oilfield Indemnity Act, La. R.S. 9:2780. Both lower courts declined to do so, correctly finding that the underlying facts and circumstances simply did not extend so far.

A. OCSLA TEST COMPELS APPLICATION OF LOUISIANA LAW

McDermott presents a grossly oversimplified and inaccurate view of the district court's holding that the contract at issue was non-maritime. McDermott claims the lower court found the contract non-maritime because "the magic word 'vessel' does not appear inside the four corners of the agreement."[12] McDermott misleads this Court with the assertion that the lower court reached its holding "because McDermott's blanket subcontractor's agreement with Landry did not specifically say that Wagner was to work aboard a vessel."[13] In fact, Wagner did not work aboard a vessel, nor did any of the contract welders. McDermott further states in its argument that the contract related to "the operations of its vessels," and that Wagner worked aboard the barge.[14] Both statements are patently untrue. McDermott's repeated references to

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[12] Petition for Writ, p. 7.

[13] Id. at pp. 4-5.

[14] Id. at p. 2.

"stevedore-vessel contractual relationships" are equally misleading. There is no stevedore in this case, nor is there a contract with a vessel.

The contract was found to be non-maritime because it lacked the requirements under the applicable jurisprudence indicating that it was "focused on the use of a vessel in a maritime transaction." *Theriot v. Bay Drilling Corp.*[15] The district court found that the specific work order called for the welders to work on an offshore platform, which was, in fact, precisely what they did. No work was done on the McDermott barge, which the district court found was only "incidentally related" to the primary project underway, i.e., the construction of the offshore platform, citing *Dupre v. Penrod Drilling Corp.*[16] The court found that the contract simply did not "require nor . . . address the supply and use of a vessel for performance of the welding services . . . "[17]

The U.S. Fifth Circuit adopted the lower court's reasoning, calling it a "thorough analysis," and held the contract was non-maritime. The rationale under which the subject contract was found to be non-maritime is in accord with all U.S. Fifth Circuit precedent, originating with *Davis, supra,* and extending through its progeny. The contract was found non-maritime because its subject matter was not related to the services of, nor was it performed on, a vessel. McDermott's characterization of a hyper-technical reasoning regarding the contract's nature is distorted and inaccurate.

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[15] 783 F.2d 527 (5th Cir. 1986)

[16] 993 F.2d 474, 477 (5th Cir. 1993)

[17] P.App. 19.

Because the contract is non-maritime, Louisiana law applies as a function of the Outer Continental Shelf Lands Act.[18] Consequently, the state statute prohibiting the kind of indemnity sought here, that afforded for injuries arising from the indemnitee's own negligence, applied and nullified the obligation.[19]

B. LAW APPLICABLE TO THE CONTRACT IS NOT GOVERNED BY THE COURT'S ADMIRALTY JURISDICTION OR THE NATURE OF THE PRINCIPAL DEMAND

McDermott argues that the maritime nature of the plaintiff's § 905(b) action and the district court's admiralty jurisdiction compel the application of § 905(c) to the contractual indemnity issue. To this end, McDermott cites *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Company,*[20] and *Sisson v. Ruby.*[21] The whole maritime nexus argument is unnecessary – the issue of the court's admiralty jurisdiction was never raised, and is a completely separate question from the law applicable to a particular contract. Neither of the United States Supreme Court cases cited by McDermott has anything to do with contracts or contractual indemnity. Maritime jurisdiction is not even in question here.

The law applicable to the contract is determined by the nature of the contract itself, not by the applicable tort

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[18] 43 U.S.C. § 1333.

[19] La. R.S. 9:2780.

[20] ___ U.S. ___, 115 S.Ct. 1043, 130 L.Ed.2d 1024 (1995).

[21] 497 U.S. 358, 110 S.Ct. 2892, 111 L.Ed.2d 292 (1990).

law governing the principal demand. *Laredo Offshore Constructors, Inc. v. Hunt Oil Co.*[22]; *Hale v. Co-Mar Offshore Corp.*[23]; *Home Insurance Company v. Garber Industries, Inc.*[24]; *Heath v. Superior Oil Co.*[25] The fact that the only surviving claim plaintiff had against McDermott was a § 905(b) claim, and that the district court had admiralty jurisdiction over the entire case, did not lead inexorably to application of § 905(c) to the indemnity agreement, absent the necessary vessel-related contract.

McDermott's invocation of the legislative history does not serve its purposes. The critical language pertaining to preemption of state law, the consummation for which McDermott devoutly wishes here, was omitted from the final version of the conference report, as McDermott itself finally admits. In everything written about § 905(c), from legislative history reports to pertinent case law, its limited application to vessel-related contracts alone is apparent. See *Campbell v. Sonat Offshore Drilling, Inc.*[26]; *Knapp v. Chevron USA, Inc.*[27]; *Doucet v. Gulf Oil Corp.*[28]; *Fontenot v. Mesa Petroleum Co.*[29] Authority does not exist for the preemption of applicable state law, nor for the application of § 905(c) to non-vessel related contracts.

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[22] 754 F.2d 1223, 1231-32 (5th Cir. 1985).

[23] 588 F.Supp. 1212, 1214-15 (W.D.La. 1984).

[24] 588 F.Supp. 1218, 1220-21 (W.D.La. 1984).

[25] 617 F.Supp. 33 (W.D.La. 1985).

[26] 979 F.2d 1115 (5th Cir.), *reh. denied*, 979 F.2d 1115 (1992).

[27] 781 F.2d 1123 (5th Cir. 1986).

[28] 783 F.2d 518 (5th Cir. 1986).

[29] 791 F.2d 1207 (5th Cir. 1986).

McDermott also argues that federal law governs the contractual indemnity provision based on *Yamaha Motor Corporation U.S.A. v. Calhoun*,[30] *Foremost Insurance Co. v. Richardson*,[31] and *Grubart, supra.* Each case cited by McDermott is a tort case and is concerned with maritime tort jurisdiction. This is a contractual dispute. The underlying tort does not dictate the law which applies to the contract.

If the "remedy follows the jurisdiction," as McDermott claims,[32] any number of factors could be manipulated to trigger application of a particular body of law to a contract for offshore services. For example, were it not for McDermott's unilateral election to introduce a vessel into the work place, the possibility of a § 905(b) claim would disappear and applicability of § 905(c) would not be an issue. Likewise, if plaintiff's Jones Act claim had been successful, McDermott's logic would compel application of maritime law, even though it is well established that the provision of seamen does not necessarily make the controlling contract maritime.[33] Such an argument is nonsensical. The governing law is dictated by the nature of the contract.

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[30] ___ U.S. ___, 116 S.Ct. 619, 133 L.Ed.2d 578 (1996).

[31] 457 U.S. 668, 102 S.Ct. 2654, 73 L.Ed.2d 300 (1982), *reh. den.*, 459 U.S. 899, 103 S.Ct. 198, 74 L.Ed.2d 160 (1982).

[32] Petition for writ, p. 21.

[33] *Laredo*, 754 F.2d at 1231; *Wilson v. J. Ray McDermott & Co., Inc.*, 616 F.Supp. 1301 (E.D.La. 1985).

C. THE PREEMPTION ISSUE DOES NOT ARISE

McDermott claims that § 905(c) must be given preemptive effect because to do otherwise would contravene this Court's expressed desire for uniformity. It is worth noting that any argument for preemption assumes the application of Louisiana law as an initial premise, in order for there to be something to preempt. Although McDermott never makes this admission explicitly, if Louisiana law applies through OCSLA, the contract must be non-maritime. If the contract is non-maritime, it is hard to conceive of a situation in which it could also be a contract "between an employer . . . and the vessel" for purposes of § 905(c). As a result, it is highly improbable that both Louisiana law and § 905(c) would ever apply simultaneously, making preemption an issue. In any event, as the subject contract is not vessel-related, § 905(c) does not apply and there is no preemption argument to be made here.

McDermott would be well served to review this Court's holding in *Rodrigue, supra.* This Court stated that, in enacting OCSLA, Congress assumed that admiralty law should not apply to the Outer Continental Shelf unless Congress made it apply. Congress then elected not to have admiralty law apply and to treat offshore platforms as federal enclaves, not as vessels.[34] The adoption of state law as surrogate federal law demonstrates Congress' admission that maritime law was simply "inapposite to these fixed structures."[35] The drafters of the

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[34] 89 S.Ct. at 1839.

[35] Id. at 1840.

statute were keenly aware of the "inaptness" of admiralty law for dealing with the resources of the seabed and subsoil.[36]

The Fifth Circuit echoed the same theme in *Laredo*,[37] holding that a contract for the building of a fixed platform on the Outer Continental Shelf was not subject to admiralty jurisdiction. "It is apparent that Congress, in passing the OCSLA, made a determination that maritime law, which never before had to deal with the extraction of minerals from the sea bottom, was unsuited to the task and that state law as adopted federal law should control."[38] While an agreement to transport people and supplies in a vessel to and from a well site on navigable waters would be a maritime contract, and thus suggests a sufficient maritime nexus for the exercise of maritime law to any resulting contractual controversy, a contract for the provision of welders related to platform construction does not offer such a maritime connection.

McDermott now petitions this Court seeking the "protection of Federal law" from the "adverse impact on an important area of the national economy caused by patchwork rules" resulting from OCSLA's application of state law.[39] McDermott's interest in the supremacy of

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[36] Id. at 1841.

[37] 754 F.2d 1223 (5th Cir. 1985).

[38] 754 F.2d at 1228.

[39] The idea that McDermott, a multinational conglomerate of colossal proportions, needs protection from a "mom and pop" labor supplier, rather strains credibility. McDermott wasted no energy "shaking its corporate head" when capital went out of business because of McDermott's cancellation of all

federal law is clearly selective – OCSLA is just as much a product of the legislative will as the LHWCA, yet its purpose and function, which is directly responsible for the application of Louisiana law in the present dispute, is summarily ignored by McDermott. Indeed, were it not for OCSLA, the plaintiff would not have had recourse to the LHWCA.[40]

D. NO INCONSISTENCY WITHIN THE U.S. FIFTH CIRCUIT

Finally, McDermott contends that there is an inconsistency within the U.S. Fifth Circuit between the appellate decision in this case and that in *Campbell, supra,* decided just four years ago. *Campbell* is distinguishable primarily because the contract at issue was deemed maritime following application of the three-part OCSLA test. The contract called for a casing crew to perform casing services form a vessel, using the vessel's gear and equipment. Neither the contract's place of performance, nor the location of the subject injury, occurred on an OCSLA situs. The *Davis* analysis revealed a maritime contact, so general maritime law controlled. On this basis alone, the case is distinguishable and inapposite.

Furthermore, the § 905(c) dispute in that case concerned the "reciprocity requirement" of the provision, not whether it was preemptive of state law, or otherwise applicable if the contract was non-maritime. Nothing in

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contracts in retaliation for the failure to pay its defense costs on this claim.

[40] 43 U.S.C. § 1333.

the § 905(c) discussion relates to McDermott's arguments here. The *Campbell* court ultimately held that, as general maritime law permitted contractual choice of law provisions, Texas law was applicable and did not conflict with maritime law. Both *Campbell* and this case relied upon the OCSLA three-part test. The differing results are attributable to the varying factual scenarios. The U.S. Fifth Circuit's opinion in *Campbell* is not inconsistent with the instant case.

CONCLUSION

For the reasons set out above, this is not a case worthy of the Court's limited judicial resources, and a writ of certiorari should not be issued.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE/OPELOUSAS DIVISION

Date: January 23, 1995
Reply To: Judge Doherty
Subject: Wagner vs. McDermott, Inc., et al, CV93-0715
To: All Counsel of Record

MINUTE ENTRY
(Filed Jan. 23, 1995)

A telephone status conference was held in this matter before Judge Rebecca F. Doherty on January 19, 1995. The following counsel participated on line: For the plaintiff, Thomas Edwards; for Defendant McDermott, James Doyle; for Defendant Capital/Landry, Thomas Eppling; for Defendant Commercial Union, Gary Kraus; for Defendant Storebrand, J. Clayton Davie, Jr.

The Court discussed McDermott's recently filed Motion to Amend Findings of Fact and Judgment pursuant to Rule 52(B) and Motion for New Trial pursuant to Rule 59. In light of the fact that a judgment has not been issued in this case, the Court believes that McDermott's motion is better termed a Motion to Reconsider the Court's Reasons for Judgment. The Court acknowledges that McDermott did not own the platform on which Plaintiff Wagner was working; however, the Court finds that this fact does not alter the analysis and outcome of this Court's Reasons for Judgment.

All Counsel agreed that McDermott was involved in building and construction of and on the fixed platform

upon which Plaintiff Wagner was working. Accordingly, this Court hereby GRANTS McDermott's motion *in part* and ALTERS its Reasons for Judgment in the following limited respects:

1. Any reference to a "McDermott offshore platform" should be changed to "an offshore platform."

2. Any reference to McDermott as a "platform owner" should be changed to read "contractor involved in the building and construction of and on a fixed platform."

The Court has reviewed McDermott's memorandum and supplemental memorandum in support of its motion. The Court finds McDermott incorrect in its assertion that "the Court heavily relied on its assumption that McDermott owned a platform affixed to the sea bed of the outercontinental shelf" in reaching its decision. The Court directs McDermott to the section in its Reasons for Judgment in which the Court applied the *Davis* factors to the contract between McDermott and Capital/Landry. The Court believes that in determining whether the blanket subcontractor's agreement in this case was a maritime versus non-maritime contract, it does not matter who owned the platform on which Plaintiff Wagner was working. Rather, applying the *Davis* factors to the contract is what determines the nature of the contract.

In addition, the Court did not rely on its assumption that McDermott owned the platform in concluding that the provisions of 905(c) do not void any Louisiana law to the contrary. The Court simply found 905(c) inapplicable to the facts of this case because it found that there was no "agreement between the vessel and the employer" as

required by 905(c). Although McDermott was not a "platform owner," this fact does not change this Court's finding that there was no agreement between "the vessel and the employer." Accordingly, the Court hereby DENIES the remainder of McDermott's motion, as the Court believes its analysis and conclusions of its Reasons for Judgment are sound.

The Court ORDERED counsel for Commercial Union to make sure that counsel submit a judgment agreed to by all parties reflecting this Court's ruling to the Court for signature on or before January 27, 1995.